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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (NC)

**CISCO'S STATEMENT
CONCERNING JURY INSTRUCTION
ARGUMENTS**

Final Pretrial Conf.: November 3, 2016
Dept: Courtroom 3 - 5th Floor
Judge: Hon. Beth Labson Freeman

1 Earlier this evening, Arista counsel filed the parties' joint submission re: jury instructions.
2 *See* Dkt. 597. Thereafter, Arista filed a “statement” regarding jury instructions. *See* Dkt. 598.

3 Counsel for the parties have been cooperating, exchanging drafts of pre-trial materials, and
4 meeting-and-conferring on the proposed jury instructions. As of this evening, however, (i) neither
5 side (neither Arista nor Cisco) has “exchanged” its written arguments to support its version of
6 disputed jury instructions with the other , and (ii) the parties continue to dispute a series of
7 instructions that Cisco believes further meeting-and-conferring should resolve. As of this evening,
8 it is unclear to Cisco whether Arista is willing to continue to meet-and-confer to see if the list of
9 disputed instructions can be narrowed (as Cisco hopes), and if Arista is willing to exchange
10 written argument on the disputed instructions (between the parties) before such arguments are
11 filed with the Court.

12 Because neither side has yet provided its “argument” sections to the other as of midnight
13 tonight, Cisco believes that it would best assist the Court to file the written arguments on the
14 disputed jury instructions after (i) further meeting and conferring, in efforts to reduce the number
15 of disputed instructions, and (ii) mutual exchanges and revisions of written argument on disputed
16 instructions, so that the points of disagreement on remaining, disputed instructions are more
17 clearly framed for the Court. Moreover, because the Court’s Standing Order requires the parties’
18 proposed jury instructions to be filed 7 days before the final pretrial conference, and because the
19 final pretrial conference for this case is scheduled for November 3, Cisco believes that 5 days
20 remain for this process. (So long as the parties file their written arguments on disputed jury
21 instructions on or before October 27, that would be 7 days or more prior to the final pretrial
22 conference.)

23 If the Court would nonetheless like immediate submission of the parties’ arguments on
24 disputed jury instructions (more than 7 days before the final pretrial conference), Cisco (like
25 Arista) stands ready to file such materials immediately. Barring that, Cisco intends to continue to
26 engage Arista for (i) further meeting-and-conferring on disputed instructions; (ii) mutual
27 exchanges, and then responsive edits, for the parties’ written arguments before they are submitted
28

1 to the Court, and (iii) a joint submission to the Court this coming week (on or before October 27)
2 with less disputed instructions and with written argument from both sides for all such disputes

3
4 Dated: October 21, 2016

Respectfully submitted,

5 /s/ John M. Neukom

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